EXHIBIT 5

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ATTYS. D. Eberhart

RONALD RUS, #67369
rrus@rusmiliband.com
LEO J. PRESIADO, #166721
lpresiado@rusmiliband.com
RUS, MILIBAND & SMITH
A Professional Corporation
Seventh Floor
2211 Michelson Drive
Irvine, California 92612
Telephone: (949) 752-7100
Facsimile: (949) 252-1514

Attorneys for Defendants
THUNDERWOOD HOLDINGS, INC.,
BRIAN DUNNING, and BRIANDUNNING.COM

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

EBAY INC., Plaintiff, vs. DIGITAL POINT SOLUTIONS, INC.; SHAWN HOGAN; KESSLER's FLYING CIRCUS; THUNDERWOOD HOLDINGS, INC.; TODD DUNNING; DUNNING ENTERPRISES, INC.; BRIAN DUNNING; BRIANDUNNING.COM; and DOES 1-20, Defendants.	CASE NO. C 08-4052 JF **RESPONSES OF DEFENDANT BRIANDUNNING.COM TO FIRST SET OF REQUESTS FOR PRODUCTION PROPOUNDED BY PLAINTIFF EBAY INC.**

PROPOUNDING PARTY: PLAINTIFF EBAY INC.

RESPONDING PARTY: DEFENDANT BRIANDUNNING.COM

SET NO.: ONE (1)

Defendant BrianDunning.com ("Defendant" and/or "Responding Party") hereby responds to the First Set of Requests for Production (Nos. 1-33) propounded by Plaintiff eBay Inc. ("Plaintiff" and/or "Propounding Party") as follows:

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GENERAL STATEMENT

Defendant's Motion to Dismiss Plaintiff's First Amended Complaint was granted by Order entered February 24, 2009. As such, Plaintiff's Complaint has been dismissed with leave to amend. No amended complaint has been filed and/or served in this action. As such, there is no pending claim against Defendant and Defendant is not required to respond to Plaintiff's discovery request. In this regard, Defendant requested that Plaintiff acknowledge that no response is required or, in the alternative, grant Defendant an extension of time to respond to the discovery requests until some time after Plaintiff files an amended complaint against Defendant, if at all. Plaintiff refused Defendant's request without explanation. Defendant serves these responses out of an abundance of caution in the event it is determined that such responses are required despite the dismissal of Plaintiff's Complaint against Defendant. Otherwise, Defendant reserves the right to withdraw these responses in total and otherwise object to the use, reference to, or disclosure of these responses in any manner for any purpose.

Brian Dunning ("Mr. Dunning") has invoked his privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Since Mr. Dunning is the sole representative of Responding Party, and Mr. Dunning declines to sign these discovery responses on behalf of Responding Party, counsel for Responding Party is signing these responses pursuant to Federal Rules of Civil Procedure Rule 26(g). These responses to requests for documents directed at Responding Party are not a waiver of Mr. Dunning's privilege.

Furthermore, the Federal Bureau of Investigation has seized all documents and computers, disk drives, hard drives, cell phones and servers containing information potentially related to this matter. Assistant United States Attorney Kyle F. Waldinger in charge of this investigation has refused all requests to provide Defendants with a copy of the material seized

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by the FBI. Those items and records may contain information responsive to the requests below, but those items and records are not in the possession, custody or control of defendants.

Without waiving any of the foregoing, Responding Party responds to the requests below:

RESPONSES

REQUEST FOR PRODUCTION NO. 1:

All documents relating to eBay, including all agreements, terms of service and terms and conditions.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party produced a limited number of documents at the time of making its Initial Disclosures. Responding Party has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited from producing these documents at this time. Responding Party has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 2:

All documents relating to, or Communications with, eBay or any current or former employee of eBay.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party produced a limited number of documents at the time of making its Initial Disclosures. Responding Party has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited from producing these documents at this time. Responding Party has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 3:

All documents relating to payment of commissions or other revenue obtained by briandunning.com through participation in, interaction with or manipulation of eBay's Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects on the grounds that the term "manipulation" is vague, argumentative and conclusory. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it violates Responding Party's right to privacy, and seeks production of trade secrets or other confidential information. Responding Party further objects on the ground that this information is equally available to Plaintiff. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party produced a limited number of documents at the time of making its Initial Disclosures. Responding Party has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited from producing these documents at this time. Responding Party has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 4:

All documents relating to eBay's Affiliate Marketing Program, including, but not limited to, all methods and technologies used by briandunning.com to obtain revenue from, manipulate or otherwise interact with, eBay's Affiliate Marketing Program, including, but not limited to, all software, source code, Javascript, and HTML code.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects on the grounds that the term "manipulate" is vague, argumentative and conclusory. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party produced a limited number of documents at the time of making its Initial Disclosures. Responding Party has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited from producing these documents at this time. Responding Party has no other documents in its possession, custody or control that are responsive to this request.

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REQUEST FOR PRODUCTION NO. 5:

All documents relating to advertisements for eBay used, or purported to be used, on any website or ad network that directed or referred Users to eBay as part of eBay's Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party produced a limited number of documents at the time of making its Initial Disclosures. Responding Party has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited from producing these documents at this time. Responding Party has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 6:

All documents reflecting the number of Users who allegedly clicked on an advertisement for eBay used, or purported to be used, by briandunning.com to direct or refer Users to eBay as part of eBay's Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding

Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party produced a limited number of documents at the time of making its Initial Disclosures. Responding Party has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited from producing these documents at this time. Responding Party has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 7:

All documents relating to methods or techniques intended to, or causing, a User's browser to load any eBay webpage, webpage content or data therefrom.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party produced a limited number of documents at the time of making its Initial Disclosures. Responding Party has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited from producing these documents at this time. Responding Party has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 8:

All documents sufficient to identify all advertising networks, advertising syndication services or websites used or purportedly used by briandunning.com to advertise or promote eBay or to interact in any way with eBay or eBay's Affiliate Marketing Programs.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party produced a limited number of documents at the time of making its Initial Disclosures. Responding Party has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited from producing these documents at this time. Responding Party has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 9:

All documents sufficient to identify all Affiliate Marketing Programs, not including eBay's Affiliate Marketing Program, with whom briandunning.com obtained revenue or otherwise interacted.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 10:

All documents relating to and/or describing methods and techniques used by any other Affiliate Marketing Program that briandunning.com interacted with, participated in or manipulated.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects on the grounds that the term "manipulated" is vague, argumentative and conclusory. Responding Party further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have any responsive documents in its possession, custody or control.

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REQUEST FOR PRODUCTION NO. 11:

All documents sufficient to identify the source of any technology, technique or method used by briandunning.com to participate in, manipulate or interact with the eBay Affiliate Marketing Program, or any other Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects on the grounds that the term "manipulate" is vague, argumentative and conclusory. Responding Party further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 12:

All documents sufficient to identify any individuals, groups, books, manuals or other materials consulted by briandunning.com while developing any technology, technique or method used by briandunning.com to participate in, manipulate or interact with the eBay Affiliate Marketing Program, or any other Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects on the grounds that the term "manipulate" is vague, argumentative and conclusory. Responding Party further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 13:

All documents relating to Commission Junction, including all agreements, terms of service and terms and conditions.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 14:

All documents relating to, or Communications with, Commission Junction or any current or former employee of Commission Junction.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 15:

All documents relating to, or Communications with, Digital Point Solutions, Inc., Kessler's Flying Circus, Thunderwood Holdings, Inc., or Dunning Enterprise, Inc.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 16:

All Communications with Shawn Hogan, Todd Dunning or Brian Dunning.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Responding Party further objects to this request on the ground that it violates privacy rights of third parties.

Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 17:

All documents relating to, or Communications with, Rachael Hughes, or any companies or entities owned, controlled, affiliated with or used by Rachael Hughes, relating to eBay's Affiliate Marketing Program including, but not limited to, any agreements with Rachael Hughes and company and any technology transferred to or from Rachael Hughes and company.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Responding Party objects to this request on the grounds that Rachel Hughes is unknown to Responding Party, therefore no response is possible and all objections are reserved until eBay properly identifies this person or entity.

REQUEST FOR PRODUCTION NO. 18:

All documents sufficient to describe all phone numbers, email addresses, web pages, instant messenger or mail accounts and social network accounts maintained, formerly maintained or registered to briandunning.com.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have possession, custody, or control of any responsive documents.

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REQUEST FOR PRODUCTION NO. 19:

Documents sufficient to identify any Aliases used by briandunning.com in any Internet Forum at or within which Briandunning.com discussed any aspect of their participation in, manipulation of or interaction with eBay's Affiliate Marketing Program, or any other Affiliate Marketing Programs, including, but not limited to, forums such as blogs, listservs, Usenet newsgroups or chat rooms.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects on the grounds that the term "manipulation" is vague, argumentative and conclusory. Responding Party further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 20:

Documents sufficient to identify any Internet Forum at or within which briandunning.com discussed any aspect of their participation in, manipulation of or interaction with eBay's Affiliate Marketing Programs, or any other Affiliate Marketing Programs, including, but not limited to, forums such as blogs, listservs, Usenet newsgroups or chat rooms.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects on the grounds that the term "manipulation" is vague, argumentative and conclusory. Responding Party further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 21:

Documents sufficient to identify all internet service providers (ISPs) and IP addresses used by briandunning.com.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 22:

Documents sufficient to identify all computers, servers, electronic data storage and hosting companies, entities, or facilities used by briandunning.com.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: To the extent that Responding Party was a partner in Kessler's Flying Circus, which had computers and stored data, this material is currently in the possession of the FBI and not available to Responding Party. Responding Party does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 23:

Documents sufficient to identify any entity used or hired to maintain or restore electronic data or systems relating to briandunning.com's participation in, manipulation of or interaction with eBay's Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects on the grounds that the term "manipulation" is vague, argumentative and conclusory. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 24:

Documents sufficient to identify software used to clean, reformat or erase hard-drives used by briandunning.com, or any equipment owned, used or maintained by briandunning.com.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 25:

All documents sufficient to identify all business entities or fictitious business names currently or formerly maintained by briandunning.com.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 26:

All documents filed by briandunning.com with any Secretary of State.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

Responding Party objects on the ground that this request is overbroad, unduly burdensome and oppressive. Responding Party further objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Other than the documents Responding Party produced as part of its Initial Disclosures, Responding Party has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 27:

Documents sufficient to show the structure and organization of briandunning.com and all companies or other entities owned or controlled by briandunning.com that were involved in or interacted with any Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

Responding Party objects on the ground that this request is overbroad, unduly burdensome and oppressive. Responding Party further objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Other than the documents Responding Party produced as part of its Initial Disclosures, Responding Party has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 28:

Documents sufficient to identify all employees, contractors or temporary employees of briandunning.com, their dates of employment, duties, salary and any other compensation.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

Responding Party objects on the ground that this request is overbroad, unduly burdensome and oppressive. Responding Party further objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding Party further objects to this request on the ground that it violates privacy rights of third parties, seeks production of trade secrets or other confidential information.

REQUEST FOR PRODUCTION NO. 29:

All documents constituting briandunning.com's annual, quarterly and monthly audited, compiled, reviewed or unaudited financial statements, including all income statements and balance sheets of briandunning.com.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

Responding Party objects on the ground that this request is overbroad, unduly burdensome and oppressive. Responding Party further objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding Party further objects to this request on the ground that it seeks production of trade secrets and confidential financial information, and invades Responding Party's rights of privacy.

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REQUEST FOR PRODUCTION NO. 30:

All documents sufficient to identify all assets and financial accounts (including those outside of the United States) maintained or formerly maintained by briandunning.com.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding Party further objects to this request on the ground that it violates Responding Party's right to privacy, and seeks production of trade secrets and confidential financial information.

REQUEST FOR PRODUCTION NO. 31:

Documents constituting briandunning.com's tax returns for the years 2003 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

Responding Party objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding Party further objects to this request on the ground that it violates Responding Party's right to privacy, seeks privileged financial information, see e.g., California Revenue and Taxation Code section 19542.

REQUEST FOR PRODUCTION NO. 32:

All documents relating to the transfer or assumption of any liability by briandunning.com.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 33:

All documents relating to any insurance policies relevant to this action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, Responding Party responds as follows: Responding Party does not have possession, custody, or control of any responsive documents.

DATED: February 26, 2009

RUS, MILIBAND & SMITH
A Professional Corporation

By: [signature]
LEO J. PRESIADO
Attorneys for Defendants
Thunderwood Holdings, Inc., Brian Dunning and BrianDunning.com

PROOF OF SERVICE
eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052 JF

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2211 Michelson Drive, Seventh Floor, Irvine, California 92612.

On **February 26, 2009**, I served the foregoing documents described as **RESPONSES OF DEFENDANT BRIANDUNNING.COM TO FIRST SET OF REQUESTS FOR PRODUCTION PROPOUNDED BY PLAINTIFF EBAY, INC.** on the interested parties in this action by placing a copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

_✓_ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

___ (By E-Mail) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons.

___ (By Facsimile) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons by facsimile.

___ (By Hand Delivery) As follows: I caused the above-referenced document(s) to be hand delivered to the above-named persons.

___ (By Overnight Delivery) As follows: By overnight delivery via Overnite Express and/or Federal Express to the office of the addressee noted on the attached service list.

Executed on **February 26, 2009**, at Irvine, California.

_✓_ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

RHONDA RADFORD

SERVICE LIST
eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052

David R. Eberhart
Sharon M. Bunzel
Colleen M. Kennedy
O'Melveny & Myers
Two Embarcadero, 20th Floor
San Francisco, CA 94111
Tel: (949) 984-8700
Fax: (949) 984-8701
Email: deberhart@omm.com, sbunzel@omm.com
Attorneys for Plaintiff eBay, Inc.

Stewart H. Foreman
Freeland, Cooper & Foreman, LLP
150 Spear Street, Suite 1800
San Francisco, CA 94105
Tel: (949) 541-0200
Fax: (949) 495-4332
Email: foreman@freelandlaw.com
Attorneys for Defendants Todd Dunning and Dunning Enterprises, Inc.

Seyamack Kouretchian
Coast Law Group. LLP
169 Saxony Road
Suite 204
Encinitas, CA 92024
Tel: (760) 942-8505
Fax: (760) 942-8515
Email: seyamack@coastlawgroup.com
Attorneys for Digital Point Solutions, Inc. and Shawn Hogan

Patrick K. McClellan
Law Offices of Patrick K. McClellan
2211 Michelson Drive, Suite 700
Irvine, California 92612
Tel: (949) 261-7615
Fax: (949) 851-2772
Email: pkellymc@pacbell.net
Attorney for Kessler's Flying Circus